

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Conor O'Shea	Team: Squad #6	CCRB Case #: 201808128	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 08/31/2018 2:45 PM	Location of Incident: Flushing Avenue and Humboldt Street	Precinct: 90	18 Mo. SOL 2/29/2020	EO SOL 2/29/2020	
Date/Time CV Reported Tue, 09/04/2018 11:10 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 09/17/2018 11:14 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Tyler Howe	14840	961822	090 PCT
2. LT Henry Daverin	00000	945645	090 PCT
3. POM Philippe Vukosa	22128	953542	090 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Tyler Howe	Abuse: Police Officer Tyler Howe frisked § 87(2)(b)	
B.POM Tyler Howe	Abuse: Police Officer Tyler Howe searched § 87(2)(b)	
C.POM Tyler Howe	Abuse: Police Officer Tyler Howe searched the vehicle in which § 87(2)(b) was an occupant.	
D.LT Henry Daverin	Abuse: Lieutenant Henry Daverin frisked § 87(2)(b)	
E.LT Henry Daverin	Abuse: Lieutenant Henry Daverin searched § 87(2)(b)	
F.POM Philippe Vukosa	Abuse: Police Officer Philippe Vukosa searched the vehicle in which § 87(2)(b) was an occupant.	
G.LT Henry Daverin	Abuse: Lieutenant Henry Daverin searched the vehicle in which § 87(2)(b) was an occupant.	
§ 87(4-b), § 87(2)(g)		
§ 87(4-b), § 87(2)(g)		

Case Summary

On September 4, 2018, § 87(2)(b) called IAB and filed a complaint over the phone, generating IAB log #18-35948. § 87(2)(b)'s complaint was initially received at the CCRB as case #§ 87(2)(b) but, due to multiple incident dates, was split into three cases, generating additional cases #§ 87(2)(b) and #§ 87(2)(b).

On August 31, 2018, at approximately 2:40 p.m., § 87(2)(b) was driving his BMW 7-series in the vicinity of the intersection of Flushing Avenue and Humboldt Street in Brooklyn when he was pulled over by Police Officer Tyler Howe, Lieutenant Henry Daverin, and Police Officer Philippe Vukosa, all of the 90th Precinct, for allegedly failing to use his turn signal within 100 feet of a turn. The officers approached § 87(2)(b)'s vehicle on foot and smelled marijuana. PO Howe ordered § 87(2)(b) to exit his vehicle, which he did. PO Howe frisked § 87(2)(b) (**Allegation A: Abuse of Authority, § 87(2)(g)**). PO Howe allegedly entered § 87(2)(b)'s pockets (**Allegation B: Abuse of Authority, § 87(2)(g)**). PO Howe ordered § 87(2)(b) to walk to the rear of his vehicle and began searching § 87(2)(b)'s vehicle (**Allegation C: Abuse of Authority, § 87(2)(g)**). PO Howe recovered a stun-gun disguised as a flashlight, knowledge and ownership of which § 87(2)(b) acknowledged. At the rear of § 87(2)(b)'s vehicle, Lt. Daverin allegedly frisked and searched § 87(2)(b) again (**Allegations D and E: Abuse of Authority, § 87(2)(g)**). § 87(2)(b) was ordered to sit in the driver's seat, which he did. PO Howe searched § 87(2)(b)'s trunk (**Subsumed within Allegation C**). PO Vukosa and Lt. Daverin allegedly did so, too (**Allegations F and G: Abuse of Authority, § 87(2)(g)**). From a compartment in § 87(2)(b)'s trunk, PO Howe recovered an expandable baton, knowledge and ownership of which § 87(2)(b) denied. PO Howe arrested § 87(2)(b) without incident for § 87(2)(b).

§ 87(2)(b) (**Board Review 01**). § 87(4-b), § 87(2)(g)

Body-worn camera footage from PO Howe captured approximately four minutes of him processing § 87(2)(b)'s arrest inside of the stationhouse. The original video file can be found in IA #31 (**Board Review 02**), and the summary can be found in IA #32 (**Board Review 03**). There is no other video evidence in this case.

Findings and Recommendations

Allegation A—Abuse of Authority: Police Officer Tyler Howe frisked § 87(2)(b)
Allegation B—Abuse of Authority: Police Officer Tyler Howe searched § 87(2)(b)
Allegation C—Abuse of Authority: Police Officer Tyler Howe searched the vehicle in which § 87(2)(b) was an occupant.
Allegation D—Abuse of Authority: Lieutenant Henry Daverin frisked § 87(2)(b)
Allegation E—Abuse of Authority: Lieutenant Henry Daverin searched § 87(2)(b)
Allegation F—Abuse of Authority: Police Officer Philippe Vukosa searched the vehicle in which § 87(2)(b) was an occupant.
Allegation G—Abuse of Authority: Lieutenant Henry Daverin searched the vehicle in which § 87(2)(b) was an occupant.

An attorney was consulted regarding these allegations.

It is undisputed in this case that, on August 31, 2018, at approximately 2:40 p.m., § 87(2)(b) was driving a 7-series BMW in the vicinity of Flushing Avenue and Humboldt Street in Brooklyn when he was pulled over by PO Howe, PO Vukosa, and Lt. Daverin, who were traveling in an unmarked sedan, for allegedly failing to use his turn signal within 100 feet of the turn. It is further undisputed that PO Howe ordered § 87(2)(b) to exit his vehicle and frisked his waist, groin, and upper thigh area, that PO Howe ordered § 87(2)(b) to stand at the rear of his vehicle with Lt. Daverin while PO Howe searched § 87(2)(b)'s vehicle, and that two pieces of contraband, for which § 87(2)(b) was arrested, were recovered from his vehicle: a stun-gun disguised as a flashlight in the center console, and an extendable baton in the trunk. Given that § 87(2)(b) was ultimately arrested, a vehicle stop allegation was not pleaded.

In his verified CCRB interview, § 87(2)(b) (**Board Review 03**) provided an account generally consistent with his earlier statements, which were brief phone statements, with the following additions and inconsistencies. PO Howe and Lt. Daverin approached § 87(2)(b)'s vehicle on the driver's side while PO Vukosa approached on the passenger's side. § 87(2)(b) repeatedly denied that there was any marijuana smoke in his vehicle, but admitted that there "probably" was a "stench" of smoke present, "because it's my cousin [sic]." When asked to further describe the possible "stench" in the BMW, § 87(2)(b) stated that it "could've been cigarettes," "hookah," or "little hookah things." During his second brief phone statement, however, § 87(2)(b) denied knowing what marijuana even smells like. PO Howe patted down § 87(2)(b)'s waist, groin, and upper thigh area. PO Howe entered both of § 87(2)(b)'s pants pockets. Lt. Daverin escorted § 87(2)(b) to the rear of his vehicle while PO Vukosa began searching the vehicle. At the rear of the vehicle, Lt. Daverin patted down § 87(2)(b) like PO Howe had done, and also entered his pockets. In § 87(2)(b)'s second brief phone statement, however, § 87(2)(b) (**Board Review 04**) did not allege that Lt. Daverin frisked or searched him. PO Howe and PO Vukosa both searched § 87(2)(b)'s vehicle. The search of § 87(2)(b)'s front and back seats concluded with no contraband recovered. § 87(2)(b) was returned to the driver's seat while PO Howe, PO Vukosa, and Lt. Daverin all gathered at the rear of his vehicle, opened the trunk, and searched it. In his second brief phone statement, however, § 87(2)(b) (**Board Review 04**) did not allege that Lt. Daverin searched his vehicle. Later, at the stationhouse, PO Howe told § 87(2)(b) that his vehicle had been searched again and this time a stun-gun had been found.

PO Howe (**Board Review 05**) testified that upon approaching § 87(2)(b)'s vehicle, he smelled an odor of marijuana and asked § 87(2)(b) if he had been smoking. § 87(2)(b) said he had smoked earlier in the day. PO Howe ran § 87(2)(b)'s license on his department-issued cell phone and viewed § 87(2)(b)'s arrest history. PO Howe conducted the frisk because of § 87(2)(b)'s arrest history as well as the bagginess of his sweatshirt. PO Howe denied entering § 87(2)(b)'s pockets. PO Howe ordered § 87(2)(b) to stand at the rear of his vehicle with PO Vukosa and Lt. Daverin. Meanwhile, PO Howe entered § 87(2)(b)'s vehicle and searched the front seat area, at which point he recovered a VIPERTEK brand stun-gun disguised as a flashlight in the center console area. PO Howe exited the vehicle and walked to the trunk while PO Vukosa and Lt. Daverin escorted § 87(2)(b) to the driver's side door and ordered him to sit in the front seat, which he did. PO Howe searched § 87(2)(b)'s trunk, at which point he discovered an extendable baton in a closed first-aid kit compartment. PO Howe arrested § 87(2)(b) without incident and transported him to the 90th Precinct stationhouse. PO Howe denied that either PO Vukosa or Lt. Daverin frisked § 87(2)(b) or entered his pockets, and denied that either PO Vukosa or Lt. Daverin searched § 87(2)(b)'s vehicle.

PO Vukosa (**Board Review 06**) provided testimony that was generally consistent with PO Howe with the following inconsistencies. Although PO Vukosa did not smell any marijuana while standing outside the vehicle, he did detect an odor of probably-burnt-smelling marijuana while seated inside of § 87(2)(b)'s vehicle as he drove it back to the stationhouse. PO Vukosa did not remember whether PO Howe entered § 87(2)(b)'s pockets.

Lt. Daverin (**Board Review 07**) provided testimony that was generally consistent with PO Howe and PO Vukosa with the following inconsistencies. As Lt. Daverin, PO Howe, and PO Vukosa exited the patrol car, Lt. Daverin immediately smelled a “strong” odor of non-burnt marijuana emanating from § 87(2)(b)'s vehicle. § 87(2)(b)'s two front windows were already rolled down. Lt. Daverin estimated he was a “couple [of] feet” from the vehicle when he first smelled marijuana.

§ 87(2)(g)

An officer has probable cause to conduct a warrantless search of a vehicle and its occupants if, during a vehicle stop, that officer detects either the odor of marijuana smoke in particular, People v. Chestnut, 43 A.D.2d 260 (1974) (**Board Review 08**), or even the unspecified odor of marijuana in general, People v. Smith, 66 A.D.3d 514 (2009) (**Board Review 09**).

§ 87(2)(g)

§ 87(2)(g)

§ 87(4-b), § 87(2)(g)

§ 87(4-b), § 87(2)(g)

Civilian and Officer CCRB Histories

- § 87(2)(b)
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
- PO Howe has been a member-of-service for two years and this is the first CCRB complaint to which he has been a subject.
- PO Vukosa has been a member-of-service for six years and has been a subject in two other CCRB complaints and four other allegations, of which one was substantiated:
 - 201609123 involved a substantiated allegation of a chokehold. The Board recommended Command Discipline B. The NYPD's disposition is unavailable.
 - § 87(2)(g) [REDACTED]
- Lt. Daverin has been a member-of-service for ten years and has been a subject in 23 other CCRB complaints and 64 other allegations, of which four were substantiated:
 - 201502623 involved substantiated allegations of a frisk, vehicle search, and refusal to provide name and shield number. The Board recommended Command Discipline A. The NYPD imposed Command Discipline A.
 - 201604699 involved a substantiated allegation of entry of premises. The Board recommended Command Discipline B. The NYPD imposed no disciplinary action.
 - § 87(2)(g) [REDACTED]

Mediation, Civil and Criminal Histories

- § 87(2)(b) [REDACTED] declined to mediate this complaint.

- A Notice of Claim request was submitted to the New York City Comptroller's Office on November 28, 2018. That request is still pending as of the writing of this report (**Board Review 13**).
 - § 87(2)(b) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] (**Board Review 14**).
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Squad No.: _____

Investigator:	_____	_____	_____
	Signature	Print Title & Name	Date

Squad Leader:	_____	_____	_____
	Signature	Print Title & Name	Date

Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date